

**IN THE DISTRICT COURT OF MARYLAND FOR PRINCE GEORGE’S COUNTY**  
**Civil Division**

<b>BRENT STRAIT,</b>  <div style="text-align: center;"><b>Plaintiff,</b></div> <div style="text-align: center;"><b>vs.</b></div> <div style="text-align: center;"><b>CHRISTINO BEST</b></div> <div style="text-align: center;"><b>Defendant.</b></div>	<b>Case No. CV 050200161112020</b>
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**DEFENDANT’S MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

Pursuant to Maryland Rule 3-311 (a) and (c), Defendant Christino Best (“Defendant” or “Mr. Best”) moves to dismiss Plaintiff’s Complaint for lack of subject-matter jurisdiction and for failure to state a claim upon which relief can be granted, and for other and further relief as the Court deems just and proper. In support of this Motion, Defendant submits his Memorandum of Points and Authorities, which is being filed contemporaneously with this motion.

DATE: January 28, 2022

Respectfully submitted,

/s/ Donna L. Gaffney  
Donna L. Gaffney # 16299  
Associate Counsel  
WMATA Office of the General Counsel  
600 Fifth Street, N.W.  
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Attorney for Defendant Christino Best

**RULE 1-313 CERTIFICATION**

The undersigned attorney hereby certifies pursuant to Maryland Rule 1-313 that she is admitted to practice law in the State of Maryland.

/s/ Donna L. Gaffney  
Donna L. Gaffney

**CERTIFICATE OF SERVICE**

I certify that on January 28, 2022, a true and accurate copy of the foregoing was mailed to the undersigned counsel for Plaintiff:

Ryan J. Frazier, Esq.  
Greenberg & Bederman  
111 Bonifant St.  
Silver Spring, MD 20910

/s/ Donna L. Gaffney  
Donna L. Gaffney

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**MEMORANDUM IN SUPPORT OF**  
**MOTION TO DISMISS PLAINTIFF’S COMPLAINT**

Pursuant to Maryland Rule 3-311 (a) and (c), Defendant Christino Best (“Best”) submits this Memorandum of Points and Authorities in support of his Motion to Dismiss Plaintiff’s Complaint.

**INTRODUCTION**

Plaintiff filed suit alleging that, on or about July 10, 2019, he sustained bodily injury when a vehicle operated by Best struck his vehicle on Walker Mill Road in Prince George’s County, Maryland. (*See generally* Compl.) He alleges that Best “operated the vehicle in a negligent manner and carelessly struck Plaintiff’s lawfully owned and operated vehicle.” (*Id.* ¶ 5.) At the time of this incident, Best was operating a Washington Metropolitan Area Transit Authority (“WMATA”) Metrobus, in the scope and course of his employment as a WMATA Bus Operator. *See* Exhibit 1, Motor Vehicle Collision Information Exchange Form. Nevertheless, Plaintiff’s Complaint asserts a negligence claim against Best alone. Best now moves to dismiss the Complaint against him because he is immune from suit under Md. Code Ann., Transp. § 10-204(80).

## ARGUMENT

Plaintiff's Complaint must be dismissed against Defendant Best because Plaintiff cannot maintain a cause of action in negligence against an employee of WMATA who was performing a proprietary function within the scope of his employment.

WMATA is a tri-jurisdictional government agency of Maryland, Virginia, and the District of Columbia. *See Smith v. WMATA*, 290 F. 3d. 201, 205–206 (4<sup>th</sup> Cir. 2002); *Martin v. WMATA*, 667 F. 2d 435, 436 (4<sup>th</sup> Cir. 1981); *Morris v. WMATA*, 781 F.2d. 218, 220 (D.C. Cir. 1986); *WMATA v. Barksdale-Showell*, 956 A.2d. 16, 20 (D.C. 2009); *James v. WMATA*, 649 F. Supp. 2d 424, 429 (D. Md. 2009). It was created by interstate compact to provide mass transit in the Washington, D.C. Metropolitan area. *Id.* Because WMATA is a governmental agency, it is immune from lawsuit except to the extent that its sovereign immunity is waived. *Barksdale-Showell*, 956 A.2d at 20; *see also Delon Hampton & Assocs., Ctd. v. WMATA*, 943 F. 2d 355, 359 (4<sup>th</sup> Cir. 1991) (citing *Beatty v. WMATA*, 860 F.2d 1117, 1126 (D.C. 1988)). Section 80 of the WMATA Compact states:

The Authority shall be liable for its contracts and for its torts and those of its directors, officers, *employees and agents committed in the conduct of any proprietary function*, in accordance with the law of the applicable signatory (including rules on conflict of laws), but shall not be liable for any torts occurring in the performance of a governmental function. *The exclusive remedy for such breach of contracts and torts for which the Authority shall be liable, as herein provided, shall be by suit against the Authority.*

Md. Code Ann., Transp. § 10-204(80) (West 2018) (emphasis added); *see also* D.C. Code Ann. § 9-1107.01(80) (West 2017).

Operating a bus is a proprietary function. *See, e.g., Bah v. WMATA*, No. CIV.A. CBD-14-2803, 2015 WL 898207, at \*1 (D. Md. Feb. 27, 2015); *Marbury v. WMATA*, No.

DKC–13–0832, 2013 WL 2285436, at \*2 (D. Md. May 22, 2013) (citing *Bunn v. WMATA*, No. CIV.A. 1:09CV1334, 2010 WL 1488510, at \*1 (E.D. Va., Apr. 12, 2010); *accord Burkhart v. WMATA*, 112 F.3d 1207, 1217 (D.C. Cir. 1997) (holding that in contrast to proprietary functions, “decisions concerning the hiring, training, and supervising of WMATA employees are discretionary in nature, and thus immune from judicial review”); *accord Warren v. WMATA*, 880 F. Supp. 14, 16 (D.D.C. 1995) (WMATA’s provision of mass transit is generally considered a proprietary function).

The exclusive remedy for the Plaintiff provided by the above statute that conditionally waives WMATA’s sovereign immunity is by lawsuit against WMATA only, and not against Best. *See, e.g., Keener v. WMATA*, 800 F.2d 1173, 1176 (D.C. Cir. 1986); *Johnson v. Bechtel Assocs. Prof’l Corp., D.C.*, 717 F.2d 574, 578–80 (D.C. Cir. 1983), *rev’d on other grounds sub nom. WMATA v. Johnson*, 467 U.S. 925 (1984) (holding that Section 80 was expressly designed to shift liability from agents and employees to the principal, WMATA).

The exclusivity of the remedy requires that tort claims against WMATA employees be dismissed, with prejudice. *See Allen v. Washington et al.*, No. GJH-18-00034 (D. Md. April 30, 2018) (claim against WMATA’s bus operator dismissed because the operator was immune from suit for negligent acts committed in the scope of his employment);<sup>1</sup> *see also Bah*, 2015 WL 898207, at \*1; *Marbury*, 2013 WL 2285436, at \*2.

Plaintiff alleges he was injured when Best negligently operated a WMATA bus. As this Court held in *Bah* and *Marbury*, operating a bus is a proprietary function, and under the WMATA Compact, suit against WMATA is the exclusive remedy. *Marbury*, 2013 WL

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<sup>1</sup> A copy of this case is attached hereto as Exhibit 2.

2285436, at \*2; *see also Bah*, 2015 WL 898207, at \*1; Md. Code Ann., Transp. § 10–204(80). Defendant Best is consequently immune from suit. Therefore, this Court lacks subject matter jurisdiction over, and must dismiss, Plaintiff’s claim against Defendant Best. *See Smith*, 290 F.3d at 205.

### CONCLUSION

For the foregoing reasons, Defendant Best requests that the Court dismiss the Complaint against him with prejudice.

DATE: January 28, 2022

Respectfully submitted,

/s/ Donna L. Gaffney  
Donna L. Gaffney # 16299  
Associate Counsel  
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[dlgaffney@wmata.com](mailto:dlgaffney@wmata.com)  
*Attorney for Defendant Christino Best*

### CERTIFICATE OF SERVICE

I certify that on January 28, 2022, a true and accurate copy of the foregoing was mailed to the undersigned counsel for Plaintiff:

Ryan J. Frazier, Esq.  
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**ORDER**

UPON CONSIDERATION of Defendant Best's Motion to Dismiss Plaintiff's Complaint, any opposition thereto, and the entire record herein, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2021 hereby

ORDERED that Defendant Best's Motion shall be, and hereby is GRANTED, and Plaintiff's Complaint against him is dismissed with prejudice.

\_\_\_\_\_  
JUDGE

Copies to:

Donna L. Gaffney, Esq.  
WMATA Office of General Counsel  
600 Fifth St. NW  
Washington, D.C. 20001

Ryan J. Frazier, Esq.  
Greenberg & Bederman  
111 Bonifant St.  
Silver Spring, MD 20910

**Prince George's County Police****MOTOR VEHICLE COLLISION INFORMATION EXCHANGE FORM**

It is the policy of this police department to investigate and complete reports for traffic collisions that result in death or injury. In addition, officers may investigate property damage collisions in which a vehicle cannot be safely driven from the scene as well as those involving drivers who are intoxicated. A report will not be completed for collisions that do not meet one of these criteria.

Based on the observations of the investigator, a police report **WILL be completed.**

Barrack: District III Palmer Park Unit Phone: 3017724900 Case Number: PP190710000013  
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Investigator: OFF T. McDonald 3375 Assignment: District III Palmer Park Phone: 3017724900

Date: 07/10/2019 Time: 15:00 Weather: Clear County: Prince George's

Location: WALKER MILL RD / ADDISON RD S.

**UNIT 1**

**Vehicle** Registration: B49752 State: DC VIN: 5FYH8FU15GF048876 Type: Bus - Transit  
Year: 2016 Make: NWFL Model: XDE  
Insurance: UNKNOWN Policy #: 0000  
**Owner** Name: WMATA METRO  
Address: 600 5TH ST NW WASHINGTON DC 20012  
Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
**Driver** Driver's License Number: \_\_\_\_\_ License State: MD  
Name: CHRISTINO ZAPATA BEST Date of Birth: \_\_\_\_\_  
Address: 7513 MANDAN RD APT 101 GREENBELT MD 20770  
Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

**UNIT 2**

**Vehicle** Registration: USZ8092 State: VA VIN: 1G4HR54K81U145083 Type: Passenger Car  
Year: 2001 Make: BUICK Model: LESABRE  
Insurance: UNKNOWN Policy #: 0000  
**Owner** Name: BRENT N STRAIT  
Address: 323 62ND ST NE APT#206 WASHINGTON DC 20019  
Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_  
**Driver** Driver's License Number: \_\_\_\_\_ License State: DC  
Name: BRENT N STRAIT Date of Birth: \_\_\_\_\_  
Address: 323 62ND ST NE APT#206 WASHINGTON DC 20019  
Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

**WITNESS**

Name: LAMAR DONAHUE GALLIMORE  
Address: 6636 24TH AVE HYATTSVILLE MD 20782  
Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_